

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Calling Party Pays Service Option)	WT Docket No. 97-207
in the Commercial Mobile Radio Services)	
)	
Petition for Expedited Consideration of)	
the Cellular Telecommunications Industry)	DA 98-468
Association)	

COMMENTS OF OMNIPOINT COMMUNICATIONS, INC.

Omnipoint Communications, Inc. ("Omnipoint"),¹ by its attorneys, submits these comments in response to the Public Notice concerning the February 23, 1998 Petition for Expedited Consideration filed by the Cellular Telecommunications Industry Association ("CTIA Petition").² Omnipoint has developed a technically workable Calling Party Pays ("CPP") system, but cannot implement that system until the Local Exchange Carriers ("LECs") agree to bill and collect for CPP charges and a nationwide methodology is established for caller notification of the additional charges. Omnipoint urges the Commission to move forward and issue a Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding to adopt uniform, nationwide rules for CPP offerings. With such action, the potential for wireless service to emerge as true competition to wireline offerings will be hastened.

¹ Omnipoint and its affiliates are small business licensees operating broadband PCS systems in the New York Major Trading Area and several other Basic Trading Areas, holding broadband PCS licenses to serve over 96.5 million people in the United States.

² Public Notice, DA 98-468 (rel. Mar. 9, 1998).

There has been general agreement among industry participants responding to the Commission's CPP Notice of Inquiry.³ Omnipoint herein reiterates its position that the Commission should require Local Exchange Carriers to provide the essential elements of any CMRS CPP service option, that the Commission has exclusive jurisdiction to regulate CPP, and that the Commission should allocate separate Easily Recognizable Numbering Plan Area Codes ("ERCs") to each national scope CMRS carrier proposing to offer a CPP service option.

I. Calling Party Pays Will Enable Commercial Mobile Radio Service Providers to Compete Directly Against the Incumbent Local Exchange Carriers.

Twenty seven months after the passage of the pro-competitive amendments of the Telecommunications Act of 1996, the overwhelming majority of the local exchange markets are still controlled by the incumbent LECs. In fact, incumbent LECs control 99 percent of the country's local service.⁴ The public interest will be furthered by increasing the pace of competition in the local markets.⁵ Wireless providers are poised to offer real, facilities-based competition in the local markets. While competition between wireless and wireline services is still in a nascent stage, it will develop as the public begins to perceive wireless service offerings as an alternative or substitute to wireline services.

³ Calling Party Pays Service Option in the Commercial Mobile Radio Services, Notice of Inquiry, WT Docket No. 97-207, 12 FCC Rcd. 17693 (1997) (the "CPP Notice of Inquiry").

⁴ 1996 Trends in Telephone Service, Industry Analysis Div. - CCB, at Table 9-1 (Feb. 1998) (Competitive Access Providers and Competitive LECs held a 1 percent share of nationwide local service revenue in 1996, up from 0.7 percent in 1995.)

⁵ See, e.g., Remarks of Chairman Kennard to the Legg Mason "Telecom Investment Precursors" Workshop, Washington, D.C. (Mar. 12, 1998) ("I am not satisfied with the pace of competition. The pace of competition in local markets should accelerate.").

The Commission must take affirmative steps to ensure that wireless providers have the ability to provide services that are viewed by consumers as an alternative or substitute to traditional landline services.

Calling Party Pays will significantly enhance and further competition both among wireless carriers, and between wireless and wireline carriers. Calling Party Pays will help to level the playing field by allowing wireless carriers to eliminate the charges levied on their wireless subscribers for incoming calls. These changes will make wireless services more attractive to consumers, and will help to promote wireless services as a feasible substitute for wireline services. These changes will not happen overnight, but wireless services will gradually make inroads into the monopolistic, entrenched local markets. Real competition will occur through gradual, incremental changes in traffic patterns, significantly encouraged by CPP. By moving forward and issuing an NPRM on CPP, the Commission can take a critical step towards the realization of facilities-based competition in the local markets.

II. Relying Only on Market Forces to Encourage the Development and Growth of CPP Many Not Be Adequate.

While the CMRS marketplace is certainly dynamic and competitive, as noted in the CTIA Petition,⁶ other segments of the telecommunications industry, such as the local exchange markets, are not. In order to facilitate the development and growth of CPP, wireless providers require access to the necessary billing and collections services provided by the LECs. Omnipoint submits that CMRS providers will not emerge as viable competitors to wireline providers while incumbent carriers retain monopolistic

⁶ CTIA Petition at 3.

control over the key elements necessary to make CPP a reality. The fact that there is unequal bargaining power between the two sides flies in the face of suggesting that market forces should determine "whether and when CPP will be implemented."⁷

For example, SBC, CBT, Alltel, and SNET have refused to offer billing and collections services to Omnipoint's billing partner that would allow Omnipoint to offer its wireless customers a CPP service that would bill CPP charges for calls originating in these LECs' home regions.⁸ Some incumbent LECs are offering a "CPP service option" that requires the CMRS provider to contract for extensive Intelligent Network services from the LEC in order to obtain the much needed billing and collection services.⁹ As suggested by Omnipoint in its prior comments, for many CMRS providers there is no technical need to pay for LEC Intelligent Network components, because they have their own Intelligent Network already in place. Rather, such LEC offerings would force CMRS operators to pay for services that they do not require. Moreover, most such LEC-based services are only offered on a regional basis, and only provide the capability of billing to the LEC's own customer base. As Omnipoint has stated, for CPP to be viable, virtually every call, wherever initiated, must be capable of being billed to the caller, not just those originating in a particular LEC's serving area. Thus, the "all or nothing" approach by the incumbent LECs leaves little room for hope by the CMRS industry that market based forces will bring about cost-efficient CPP services.

⁷ CTIA Petition at 3.

⁸ Since Omnipoint's Comments were filed in the CPP Notice of Inquiry, Bell Atlantic has agreed to provide the billing and collection capability, and BellSouth has agreed to a "trial" in Florida.

⁹ Comments of Omnipoint at 8.

The Commission should instead require the LECs to provide only those services necessary, such as billing and collections, to implement CPP. Such a mandate should not prove to be unduly burdensome on the LECs, as they already provide similar functions to long-distance carriers for casual dialing and other third party billing. Arguments by some incumbent LECs that supposed differences between CPP billing records and those that they already process for other services present obstacles to providing CPP billing services are without merit. Because the LECs maintain a monopolistic hold over the key elements of competition, this limited action by the Commission is needed to enable CMRS providers to offer successful CPP service offerings.

III. LEC Prices for CPP Billing and Collection Services Must be Cost-Based, Fair, and Non-Discriminatory.

While Omnipoint believes that a CPP service will be attractive to wireless subscribers, it is aware of the concerns expressed by State regulators, consumer groups, and others of the purported exorbitant CPP charges that wireless carriers would impose on wireline callers. Nothing could be further from the truth since any such scheme would render CPP services unattractive. Who would buy a service that bilked one's own loved ones, friends, and business associates? At the same time, the wireless CPP service provider must be reasonably assured of recovering its costs to provide the service, including those costs associated with the LEC's billing and collection functionality. While many LECs are offering their geographic-limited "CPP service option" at rates which might seem reasonable, Omnipoint has experienced quite another view when requesting that the LEC only provide the billing and collection component of the LECs bundled service. LECs have proposed charges of as much as \$0.72 merely to bill and collect for a single one-minute CPP call. Rates of this magnitude are far in excess of any incremental costs the LEC incurs by adding a single line to an existing billing statement and, more significantly, dwarf the rates these same LECs have established for their own bundled CPP service option.

The Commission must establish rules that prevent monopolistic pricing of LEC billing and collection services for CPP. Such rates should be incremental and cost-based. Moreover, the prices LECs charge for a single component of their own bundled service must be significantly less than the price for the entire bundled service.

IV. The Commission Has Exclusive Jurisdiction over CPP.

As presented in the comments of Omnipoint and others, jurisdictional issues should not stall this proceeding because the Commission has exclusive jurisdiction over the implementation of CMRS CPP. CPP services are not merely LEC billing and collection services. On the contrary, CPP is a service option that would be made available by a CMRS operator to its CMRS customer in conjunction with a CMRS service. As such, it is regulated like any other CMRS service, pursuant to Section 332(c) of the Communications Act, and Section 332(c)(3) prohibits State and local governments from regulating the entry of or rates charged by a CMRS provider. In addition, Congress amended Section 2(b) of the Act to preclude the States from regulating the rates charged by CMRS providers, including the rates associated with CPP service offerings.

Calling Party Pays is a service option that CMRS providers may elect to offer. The CPP rate charged to the calling party, and the method of charging and billing, is perhaps the most essential element of the CPP service offering. Inconsistent state regulation of the CPP charge, therefore, would inhibit the growth of the CPP service and subject multi-state CMRS operators to a patchwork of inconsistent state regulations.

State regulation of CPP would also be completely at odds with the fundamental purpose of Section 332(c)(3) preemption. Because the Commission licensed the service areas of CMRS providers (e.g., BTAs and MTAs) to cover more than one state, CMRS systems are deployed and CMRS services are viewed by customers without regard to state boundaries. The legislative history of Section 332(c)(3) also evinces that Congress preempted state regulatory control for the purpose of encouraging the rapid development

of mobile services, which operate without regard to state boundaries.¹⁰ Further, the multi-state scope of CMRS systems is widely accepted by both the Commission and the telecommunications industry as logical territories for wireless service providers. Such large geographic regions were adopted as license territories in order to "promote the rapid deployment and ubiquitous coverage . . . follow[ing] the natural flow of commerce,"¹¹ and to "spur competition."¹² As an inherently multi-state offering, CPP calling plans often cover many wireline rate center areas. Successful CPP service options must be seamless and available nationwide. Allowing each individual State to regulate CPP offerings would hamper the growth and development of competitive CMRS service offerings such as CPP.

V. A National, Uniform Customer Notification Method Is Necessary to Support the Development of CPP.

Here, again, a truly national approach is necessary rather than permitting individual States to establish different and potentially conflicting rules on acceptable notification methods. Wireless carriers have geographic serving areas which often span State boundaries. It is not unusual for a single cell site to provide service on both sides of such boundaries and for CPP subscribers who live and work on each side. Callers to CPP subscribers must be presented with a consistent treatment whether they are calling an in-state CPP subscriber, a CPP subscriber who obtains service from just across the border, or a CPP subscriber obtaining service from a wireless carrier located one thousand miles

¹⁰ H.R. Rep. No. 103-111, 103d Cong., 1st Sess. at 260.

¹¹ Memorandum Opinion and Order, GN Docket No. 90-314, 9 FCC Rcd. 4957, 4986 (1994).

¹² Id. at 4987-88.

away. Without reasonably consistent notification methods, caller confusion will be rampant.

Besides eliminating caller confusion, there are basic technical and pragmatic issues involved which mandate a unified, national approach. If individual States are permitted to adopt different notification requirements, wireless carriers will have an insurmountable obstacle of compliance. CPP Intelligent Network platforms will have to identify the originating caller's State, and provide complex handling of the call's progress to meet the specific State's requirements. Such a scenario would only serve to significantly raise CPP costs and reduce the likelihood of wireless/wireline competition.

Omnipoint strongly urges the Commission to develop a uniform national method to inform calling parties that they will incur a CMRS charge for calls made to CMRS customers subscribing to a CPP service plan. Omnipoint believes that no CPP service option can be viable unless it is offered in such a manner that CPP calls can be placed from, and billed to, anywhere within the U.S.

As Omnipoint has previously stated, it may be desirable to establish a transition period during which parties calling CPP subscribers will be informed of their obligation to pay for the CMRS portion of that call, and to further inform calling parties what those charges will be. While a notification system would be helpful at first, such a system could be costly to implement and maintain for an extended period of time. Moreover, consumers will quickly tire of listening to lengthy announcements to process calls they already know are to CPP subscribers.

As a long term solution, and to alleviate some of the cost concerns associated with a notification system, Omnipoint advocates that separate Easily Recognizable Numbering

Plan Area Codes ("ERC") should be allocated to each large scale CMRS carrier to be used exclusively in connection with that carrier's CPP service offering.¹³ Alternatively, the Commission should consider allocating a single ERC to a group of CMRS providers for CPP service options in certain large, geographical areas. Calling Party Pays ERCs will resolve any customer confusion, because calling parties are already fully aware that 10 digit dialing signifies a long-distance call that is based on metered pricing. Further, as consumers become familiar with CPP ERCs, consumer awareness issues will diminish. In this way, CPP ERCs can be a cost-efficient mechanism for CPP services to compete with traditional wireline services.

VI. The Commission Should Also Consider Longer-Term CPP Efficiencies.

While the actions Omnipoint suggests here are necessary to effectively launch CPP service, Omnipoint also recommends that the Commission look to the future and encourage the telecommunications industry to address CPP as a fundamental element of future telecommunications services. It is easy to envision technological solutions which permit every originating carrier to identify a CPP call, based on the ERC, and to launch a query to an Intelligent Network database which would identify both the terminating wireless carrier and the per-minute charges to be assessed. Such a database would be similar to or, perhaps, the same database that is currently being implemented for Local

¹³ In its prior Comments and Reply Comments, Omnipoint proposed that each such NPA be restricted exclusively for use by CMRS providers solely in connection with CPP service options. Omnipoint suggested that CMRS carriers with a covered population of at least 50 million should be eligible to receive a dedicated NPA. Alternatively, if the Commission considers allocating ERCs based on geographical areas, the five Regions that the Commission established for Narrowband PCS licensing would be suitable as areas for ERC allocation. See, 47 C.F.R. § 24.102(b).

Number Portability. With such a scenario, CPP costs, which ultimately are passed on to the caller, are reduced and wireless services become more attractive to every individual.

VII. Conclusion

As noted throughout the CPP Docket, CPP would significantly enhance wireless competition with traditional incumbent LEC services. However, without Federal guidelines, Omnipoint doubts that certain entrenched wireline providers will embrace this competition, and, in fact, will do whatever they can to prevent it. For the reasons stated herein, Omnipoint respectfully requests that the Commission issue an NPRM on the CPP service option.

Respectfully submitted,

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